

ORDINANCE NO. 607

AN ORDINANCE OF THE CITY OF LAS ANIMAS, COLORADO AMENDING ORDINANCE NO. 554 WHICH ESTABLISHED THE "CITY OF LAS ANIMAS WATER ACTIVITY ENTERPRISE," RATIFYING THE ESTABLISHMENT OF A SEPARATE "CITY OF LAS ANIMAS SEWER ENTERPRISE" UNDER STATE LAW; ACKNOWLEDGING THAT SUCH SEWER ENTERPRISE HAS THE AUTHORITY TO ISSUE ITS OWN REVENUE BONDS UNDER STATE LAW; MAKING CERTAIN FINDINGS WITH RESPECT TO THE REVENUES OF SUCH SEWER ENTERPRISE; REPEALING ALL ORDINANCES, RESOLUTIONS OR OTHER ACTS IN CONFLICT HERewith AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the City of Las Animas, Colorado (the "City") is the operator of a municipal water system ("Water System") and a municipal sewer system ("Sewer System," the Water System and Sewer System are referred to herein as the "Systems"), which Systems have historically operated on a self-supporting basis with their financial operations accounted for in separate and distinct enterprise funds of the City; and

WHEREAS, the City Council is authorized, pursuant to Title 37, Article 45.1, Part 1, Colorado Revised Statutes, (the "Act"), to operate and maintain the Systems as separate enterprises of the City within the meaning of the Act and Article X, Section 20 of the Colorado Constitution (the "Amendment"), and the members of City Council are authorized under such statute to act as the governing body of the enterprises; and

WHEREAS, the City Council has previously adopted on September 5, 1996, Ordinance No. 554 which created the "City of Las Animas Water Activity Enterprise" (the "Water Activity Enterprise") consisting "of the business represented by all of the City's water facilities and properties, now owned or hereafter acquired, whether situated within or without the City boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto"; and

WHEREAS, Ordinance No. 554 states that the Water Activity Enterprise will be operated as a "water activity enterprise" within the meaning of the Act; and

WHEREAS, under the Act "water activity" includes, separately or in combination, any and all aspects of water rights acquisition, water supply, project development, diversion, storage, carriage and delivery, and treatment of water, wastewater and storm water; and

WHEREAS, the Water Activity Enterprise was intended to exclude all water activities related to wastewater and the the operation of the City's Sewer System; and

WHEREAS, the City Council has previously adopted on March 4, 1998, Resolution No. 4-98 which declared the City sewer department and sewer fund to be an enterprise within the meaning of the Amendment; and

WHEREAS, the City Council has previously adopted on May 12, 1998, Resolution No. 6-98 which ratified the existence of an enterprise consisting of all the City's water activities as defined in the Act, such as water acquisition, activities related to a water project or water facility including the construction, operation, repair, and replacement of water or wastewater facilities, using revenues and income generated by and earned or acquired in connection with such water activities and held and managed in the City's water enterprise fund; and

WHEREAS, the City Council desires to amend Ordinance No. 554 to clarify that the Water Activity Enterprise created therein consists only of the business related to the Water Ssystem and specifically excludes all activities related to the operation of the Sewer System and to ratify by ordinance the existence of the "City of Las Animas Sewer Enterprise."

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COLORADO:

Section 1. Amendment of Ordinance No. 554. The City hereby amends Section 1 of Ordinance No. 554 to read as follows:

**Section 1. Establishment of Enterprise.** There is hereby established, pursuant to the terms and provisions of the Water Activity Law, Title 37, Article 45.1, Colorado Revised Statutes, the "City of Las Animas Water Activity Enterprise" (the "Enterprise"). The purpose of the Enterprise shall be to pursue or continue all of the City's water activities defined in the Act related to water but specifically excluding all sewer and wastewater activities and such Enterprise shall consist of the business represented by all of the City's water facilities and properties, now owned or hereafter acquired, whether situated within or without the City boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements, or additions thereof or thereto (the "System"). The System excludes all properties comprising the City's wastewater and sewer facilities. The Enterprise shall have all of the authority, powers, rights, obligations, and duties as may be provided or permitted by the Water Activity Law, and as maybe further prescribed by ordinance or resolution of the City.

Except as amended by this Section 1, all other provisions of Ordinance No. 554 are hereby ratified and approved.

**Section 2. Ratification of Establishment of the Sewer Enterprise.** The City hereby ratifies its establishment of the sewer enterprise as an agency of the City and formally designates it as the "City of Las Animas Sewer Enterprise" which Sewer Enterprise shall be separate and distinct from the "City of Las Animas Water Enterprise" established by Ordinance No. 554 and amended herein. It shall be the purpose of the Sewer Enterprise to pursue or continue all of the City's sewer and wastewater activities as defined in the Act, such as water acquisition, activities related to a wastewater project or wastewater facility including the construction, operation, repair, and replacement of wastewater facilities, using revenues and income generated by and earned or acquired in connection with such-wastewater activities and held and managed in the

City's sewer enterprise fund. As between the City and the Sewer Enterprise, all wastewater activities shall be deemed furnished by the Sewer Enterprise.

Section 3. Sewer Enterprise Excluded from the Provisions of the Amendment. Pursuant to and in accordance with the Act, the Sewer Enterprise shall be excluded from the provisions of the Amendment and shall be entitled to collect and spend revenues; issue revenue bonds; and construct, operate, and maintain sewer facilities and provide wastewater services; all without reference or regard to the limitations contained in the Amendment.

Section 4. Governing Body. The members of the City Council shall serve as the governing body of the Sewer Enterprise and shall be known collectively as the Board of Directors of the Sewer Enterprise (the "Sewer Enterprise Board"). Acting as the Sewer Enterprise Board, the Board may exercise the City's legal authority relating to wastewater activities as defined in the Act. The Sewer Enterprise Board hereby is directed to take all actions necessary to cause the Sewer Enterprise to comply with all applicable laws.

Section 5. Powers of the Sewer Enterprise. The Sewer Enterprise shall have all powers and authority granted to water activity enterprises engaged in wastewater and sewer activities by the provisions of the Act, including but not limited to the power to conduct and continue water activities defined in the Act which are related to the operation and maintenance of a sewer system; the power to contract with any person or entity, including other districts as defined in the Act and other water activity enterprises as defined in the Act; and the power to issue and reissue revenue bonds through its governing body in accordance with and through the provisions of Section 37-45.1-104(2), Colorado Revised Statutes.

Section 6. Sewer Enterprise Obligations and City Obligations. In consideration of the Sewer Enterprise's commitment to operate wastewater facilities and provide wastewater services for which the City actually is obligated to collect and spend revenues from rates, fees, tolls, and charges imposed by the City, the City hereby agrees to continue to provide administrative services for the Sewer Enterprise and its activities, to continue to hold title to and own all of the assets currently owned by the City and necessary to the operation of the Sewer Enterprise, to levy taxes, if any, for, and pay debt service on general obligation bonds of the City, if any, issued to finance the acquisition of water rights and the construction and installation of wastewater facilities and improvements, and to impose all rates, fees, tolls, and charges for wastewater facilities and sewer services.

Section 7. Transactions in the Name of the City. Any and all transactions of the Sewer Enterprise may be done in the name of the City or in the name of the Sewer Enterprise and neither this Section 7 nor any transaction entered into pursuant to it shall alter or abrogate the relationship of the City and the Wastewater Enterprise as established in Section 6 of this Sewer Enterprise Ordinance.

Section 8. Findings of City Council. City Council hereby makes the following findings with respect to the establishment of the Sewer Enterprise:

- (a) The City's sewer enterprise fund, wastewater facilities, and appurtenances all shall comprise the Sewer Enterprise which shall be and is the wastewater activity business owned by the City.
- (b) The Sewer Enterprise shall be and is an agency of the City for the purpose and within the meaning of the following:
  - (i) Title 24, Article 10, Part 1, Colorado Revised Statutes, the "Colorado Governmental Immunity Act";
  - (ii) Title 29, Article 1, Part 6, Colorado Revised Statutes, the "Colorado Local Government Audit Law";
  - (iii) Title 29, Article 1, Part 1, the "Local Government Budget Law of Colorado"; and
  - (iv) all other local, state, and federal laws, rules, and regulations.
- (c) The establishment of the Sewer Enterprise is necessary to provide a safe and secure wastewater treatment system for domestic use by the inhabitants of the City and other domestic customers of the Sewer Enterprise; to treat, reclaim, conserve, recharge, augment, exchange, or reuse wastewater supplies; and to provide wholesale and retail wastewater services.
- (d) The City has the authority to conduct wastewater activities as defined in the Act and is the sole owner of the Sewer Enterprise as required by the Act. The City has revenue bonding authority for wastewater activities pursuant to the County and Municipality Development Revenue Bond Act, Title 29, Article 3, Part 1, Colorado Revised Statutes, all as required by the Act.
- (e) The Sewer Enterprise has received none of its annual revenues to date for fiscal year 1998 in grants, as defined in the Act, from state and local governments, and expects to receive none of its revenues for the remainder of fiscal year 1998 from such sources.
- (f) Pursuant to the Act and this Sewer Enterprise Ordinance, the Sewer Enterprise is authorized to issue its own revenue bonds.
- (g) The Sewer Enterprise does not and shall not levy any tax whatsoever, nor shall any rates, tolls, fees, or charges, imposed by the City and collected and spent by the Sewer Enterprise, ever be deemed to be taxes for any purpose under any law, rule, or regulation, whether local, state or federal.

Section 9. Termination. The Sewer Enterprise shall remain in existence at the will of City Council and in accordance with law. In the event that the Sewer Enterprise is terminated by

operation of law or by act of City Council, any and all assets of the Sewer Enterprise, immediately and without the need for further action, shall be deemed to be and shall be assets of the City.

Section 10. Repealer. All orders, rules, regulations, ordinances and resolutions of the City, or parts thereof, inconsistent or in conflict with this Sewer Enterprise Ordinance, hereby are repealed to the extent only of such inconsistency or conflict.

Section 11. Severability. If any section, paragraph, clause or provision of the Sewer Enterprise Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceable of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Sewer Enterprise Ordinance, the intent being that the same are severable.

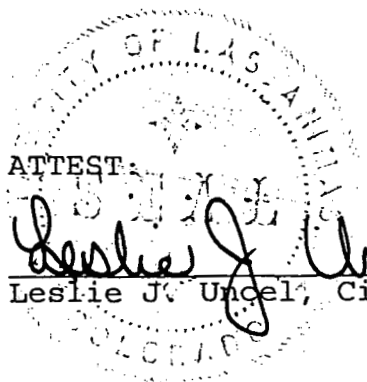
Section 12. Recording and Authentication. This Sewer Enterprise Ordinance shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the Mayor and attested by the City Clerk, as soon as may be practical after its adoption and published as required by law.

Section 13. Effective Date. This Sewer Enterprise Ordinance shall be effective 30 days following final publication, as provided by law.

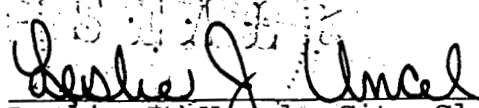
INTRODUCED, READ AND PASSED ON FIRST READING at a special meeting of the City Council the 7th day of October, 1998; ordered published in full in the Bent County Democrat in accordance with law in its issue of October 15, 1998, and consideration on final passage set for a special meeting of the City Council to be held on the 28th day of October, 1998, at 7:00 p.m., at the City Hall in Las Animas, Colorado.

INTRODUCED, READ AND FINALLY PASSED AND ADOPTED ON SECOND READING on the 28th day of October, 1998. Ordered for final publication in the Bent County Democrat accordance with law in its issue of October 29, 1998.

(SEAL)



  
William F. Howland, Mayor

ATTEST:  
  
Leslie J. Uncel, City Clerk

It was thereupon moved by Member Carl Watkins and seconded by Member Danny Aragon that the foregoing Sewer Enterprise Ordinance be finally passed and adopted.

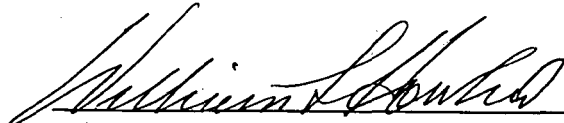
Those voting AYE: Six

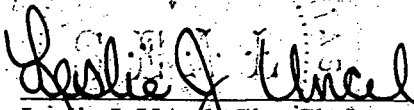
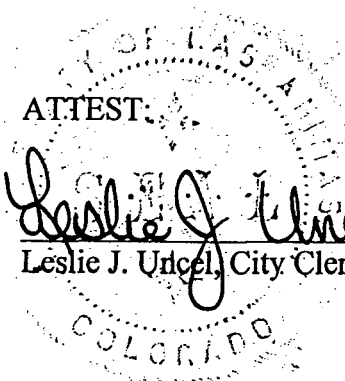
Those voting NAY: None

Not less than a majority of the Members of the City Council having voted in favor of the motion, the presiding officer thereupon declared the motion carried and the Sewer Enterprise Ordinance finally passed and adopted.

Thereupon, after consideration of other business to come before the City Council, the meeting was adjourned.

(S E A L)

  
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William F. Howland, Mayor

ATTEST:  
  
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Leslie J. Urzcel, City Clerk  


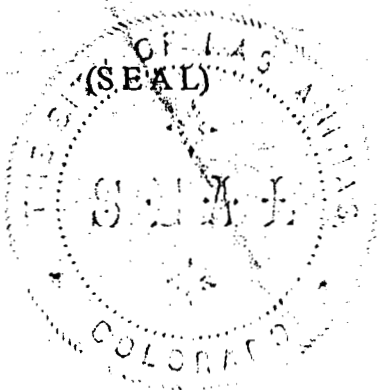
STATE OF COLORADO )

CITY OF LAS ANIMAS )

COUNTY OF BENT )

I, Leslie J. Uncel, Secretary of the City Council of the City of Las Animas, do hereby certify that the foregoing pages numbered 1 to 6, inclusive, constitute a true and correct copy of that portion of the record of proceedings of the City Council relating to the final passage and adoption of an ordinance of City Council establishing the City's Sewer Enterprise, all at the special meeting of the Members of the City Council held at the City Hall, Las Animas, Colorado on October 28, at the hour of 7:20PM as recorded in the official record of proceedings of said City kept in my office; that the proceedings were duly had and taken; that the meeting was duly held; that the persons therein named were present at said meeting and voted as shown therein; all in accordance with law.

WITNESS my hand and the seal of said City this 29th day of October, 1998.



Leslie J. Uncel  
Secretary

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